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NAKAMURA, BRIAN OSBERG, DAVID RHAMY and SHARON UPDIKE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
CONSERVATOR FOR WESTERN
CORPORATE FEDERAL CREDIT
UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, et al.,

Defendants.

No. CV 10-01597 GW (MANx)

**DIRECTORS' NOTICE OF MOTION
AND MOTION TO DISMISS SECOND
AMENDED COMPLAINT (DOC. 116)**

Honorable George H. Wu

Courtroom 10

312 North Spring Street

Date: June 9, 2011

Time: 8:30 a.m.

Courtroom: Los Angeles, 10

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on Thursday, June 9, 2010, at
3 8:30 a.m. (a date and time set by stipulated order, Doc. 118), before the
4 Honorable George H. Wu, United States District Judge for the Central District
5 of California, in Courtroom 10, located at 312 North Spring Street, Los
6 Angeles, California, Defendants **WILLIAM CHENEY, GORDON DAMES,**
7 **ROBERT H. HARVEY, JR., JAMES JORDAN, TIMOTHY M.**
8 **KRAMER, ROBIN LENTZ, JOHN M. MERLO, WARREN**
9 **NAKAMURA, BRIAN OSBERG, DAVID RHAMY** and **SHARON**
10 **UPDIKE** (the “Directors”) will and hereby do move the Court for an order
11 dismissing the Second Amended Complaint dated February 22, 2011, Doc.
12 116 (“SAC”), without leave to amend for failure to state a claim upon which
13 relief can be granted.

14 This motion is made and based on Rule 12(b)(6) of the Federal Rules of
15 Civil Procedure on the grounds that the Second, Third and Fourth Claims in
16 the SAC (the only claims asserted against the Directors) fail to state a claim
17 upon which relief can be granted against any of the Directors. The SAC
18 alleges no facts that establish conflict of interest, fraud, oppression, or
19 corruption on the part of any Director, or a complete abdication of corporate
20 responsibility by any Director. The SAC accordingly does not overcome
21 California’s Business Judgment Rule and therefore fails to state a claim.

22 The motion is based upon this notice of motion and motion, the
23 memorandum filed herewith, the request for judicial notice filed herewith, any
24 further papers as may be filed in connection with this motion, and all the
25 pleadings and record filed in this action.

26 This motion is made following the conference of counsel pursuant to
27 Local Rule 7-3, which took place on April 13, 2011.

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1 Dated: April 18, 2011.

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19 By /s/ Bruce A. Ericson
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24 John M. Merlo, Warren Nakamura, Brian Osberg,
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